

# Employees and Volunteers

## Obligations of Clubs

Presented by Sport SA

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# Key Points

Club obligations to employees

Club Obligations to volunteers

When does a volunteer become an employee?

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# Club obligations to employees

Australia's national workplace relations system, the Fair Work system, started on 1 July 2009 and was created by the Fair Work Act 2009.

Fair Work Commission

Fair Work Ombudsman

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# Club obligations to employees

## National Employment Standards (NES)

As of 1 January 2010, the NES replace the Australian Fair Pay and Conditions Standard.

Together with modern awards it makes up a new safety net for employees covered by the national workplace relations system.

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# Club obligations to employees

## 10 NES Standards

Maximum weekly hours of work

Requests for flexible working arrangements

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Parental leave and related entitlements



# Club obligations to employees

## 10 NES Standards

Annual leave

Personal/carer's leave and compassionate leave

Community service leave

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# Club obligations to employees

## 10 NES Standards

Long service leave

Public holidays

Notice of termination and redundancy  
pay

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# Club obligations to employees

## 10 NES Standards

### Provision of a Fair Work Information Statement

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# Club obligations to employees

## Taxation

If your community organisation is an employer, it is required to withhold income tax from wage payments to employees . The organisation must then provide this tax to the Australian Taxation Office (ATO).

The ATO website contains a tax withheld calculator that you can use to work out how much tax you need to withhold from payments you make to your employees and other workers each pay period (week, fortnight or month).

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# Club obligations to employees

## Taxation and Payment of Wages

Payslip must include:

Your name, your employer's full name and ABN

Date of payment of wages and pay period covered

Number of hours being paid for

All deductions made

Details about superannuation

Gross and Net wages

Allowances, loadings, penalty rates

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# Club obligations to employees

## Taxation and Payment of Wages

If an organisation's annual financial payroll is more than \$7500 a year, it is required to take out workers' compensation insurance.

Depending on its activities and functions, it may also need to take out public liability and professional indemnity insurance to cover its own liability and that of its employees to other people.

# Club obligations to employees

## Work Health and Safety (WHS)

From 1 January 2013, South Australia has been operating under new work health and safety legislation aligning with New South Wales, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory and the Commonwealth who have also adopted the same model laws.

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# Club obligations to employees

## Privacy

Employers have access to personal information about employees. This information may be sensitive and employees may wish to keep this information private.

This means that employers will need to think about the way in which they collect, use and disclose information they obtain from employees.

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# Club obligations to employees

## Superannuation

Employers must make superannuation contributions for employees that are 18 years of age or older, earning \$450 or more (before tax) in a calendar month

Employers must make superannuation contributions for employees that are under 18 years of age, earning \$450 or more (before tax) in a calendar month and they work more than 30 hours in a week

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# Club obligations to employees

## Checklist for employers

Ensure you provide the following information:

Conditions of employment and rates of pay

Working hours, breaks and public holidays

Workplace environment (for example, a workplace free from unlawful discrimination and harassment)

Work health and safety obligations

Union fees

Termination and dismissal information

Pay slips, superannuation and tax documents

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# Club obligations to employees

## Awards/ conditions

In the sport and recreation industry the main awards are the

Fitness Industry Award 2010

and the

Sporting Organisations Award 2010 (for state sport organisations)

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# Club obligations to employees

Under the new workplace system if your organisation has fewer than 15 employees, it must follow the Small Business Fair Dismissal Code when dismissing employees.

(Note: despite its name this Code applies to not-for-profit community organisations as well.)

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# Employee/ Volunteer

Sometimes it is difficult to determine the difference between a volunteer or an employee

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# Employee

Type of work	Payments and Benefits
<ul style="list-style-type: none"> <li>performs ongoing work under the control, direction and supervision of the employer</li> </ul>	<ul style="list-style-type: none"> <li>is paid for time worked</li> </ul>
<ul style="list-style-type: none"> <li>must perform the duties of their position</li> </ul>	<ul style="list-style-type: none"> <li>is paid regularly (ie. weekly, fortnightly or monthly) and has income tax withheld from their salary by their employer</li> </ul>
<ul style="list-style-type: none"> <li>provides their personal services and cannot delegate their work to 'outsiders' (ie. arrange for their work to be done by someone else who is not another employee)</li> </ul>	<ul style="list-style-type: none"> <li>is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer</li> </ul>
<ul style="list-style-type: none"> <li>works hours set by the employer, a workplace agreement or an industrial award</li> </ul>	<ul style="list-style-type: none"> <li>is entitled to paid and unpaid leave (eg. sick leave, personal/carers' leave, annual or recreation leave, or long service leave)</li> </ul>
<ul style="list-style-type: none"> <li>is recognised as a part of the employer's business and/or holds themselves out to the public as being part of that business (eg. wearing a uniform, using a business card)</li> </ul>	<ul style="list-style-type: none"> <li>is covered by professional indemnity, public liability and workers compensation insurance premiums paid by the employer</li> </ul>
<ul style="list-style-type: none"> <li>does not take commercial risks and cannot make a 'profit' or 'loss' from the work performed</li> </ul>	<ul style="list-style-type: none"> <li>generally has all 'tools of the trade' provided by the employer to carry out the work (eg. desk, computer, stationary)</li> </ul>

# What is a Volunteer?

Volunteering Australia defines volunteering as an activity with the following characteristics:

to be of benefit to the community and the volunteer,  
of the volunteer's own free will and without coercion,  
for no financial payment or gain, and  
in designated volunteer positions only

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# Volunteer

Type of work	Payments and Benefits
<ul style="list-style-type: none"> <li>works or provides services on an 'ex-gratia' basis, which means that they do so voluntarily, without a legally enforceable obligation to do so</li> </ul>	<ul style="list-style-type: none"> <li>generally, has no legally enforceable right to receive payments such as honoraria, allowances or expenses</li> </ul>
<ul style="list-style-type: none"> <li>the agreement between the volunteer and the organisation (whether verbal or written) does not contain any evidence that the parties intended to enter into a legally binding contract</li> </ul>	<ul style="list-style-type: none"> <li>may be reimbursed for out-of-pocket expenses</li> </ul>
<ul style="list-style-type: none"> <li>the volunteer arrangement can end at any time, either by the volunteer or the organisation</li> </ul>	<ul style="list-style-type: none"> <li>may receive payments like an 'honoraria', or allowances, or non-cash benefits such as free use of facilities or free or reduced price entry into an event.</li> </ul> <p>However, such payments or benefits may attract taxation obligations, and if regularly received and/ or of considerable value, may add weight to an argument that the 'volunteer' is an employee or contractor.</p>

# Defining a volunteer

The best way to be clear about the relationship between your organisation and a volunteer is to write it down.

As a general rule, if a person is described as a volunteer in a document governing the arrangement, then it would usually be considered that there is no intention to create a contractual or legal relationship.

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# Defining a Volunteer

Such an agreement should ideally include an express acknowledgement from the volunteer that he or she:

is a volunteer and not an employee;  
does not have a contract with the organisation  
and does not have any intention to create a legal relationship with the organisation.

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# Club Obligations to volunteers

What does it mean for our organisation if a person is a ‘volunteer’?

Many laws which protect employees’ rights and entitlements do not apply to volunteers.

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# Club Obligations to volunteers

The Fair Work Act 2009 (Cth) does not apply to volunteers.

A volunteer does not have any legally enforceable right to hours of work or payment.

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# Club Obligations to volunteers

The ATO advises that there is no legal definition of a 'volunteer' for tax purposes.

The ATO refers to the dictionary definition of a volunteer as 'someone who enters into any service of their own free will, or who offers to perform a service or undertaking'.

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# Club Obligations to volunteers

In certain circumstances volunteers may be provided with payments or other benefits in the course of undertaking work for an organisation.

This may include cash payments, non-cash benefits, or both.

These payments are given various descriptions, including honoraria, reimbursements and allowances. Honorary or ex gratia payments by the organisation to a volunteer are generally not legally enforceable.

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# Club Obligations to volunteers

As a general rule, volunteers do not have to pay tax on payments or benefits they may receive in their capacity as a volunteer for a not-for-profit organisation.

Community organisations are similarly not liable to withhold income tax or fringe benefits tax for payments or benefits they provide to volunteers.

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There are, however, exceptions to these general rules and the ATO has further information on this issue



# Club Obligations to volunteers

Volunteers are not covered by the terms of industrial instruments

Volunteers have no legal entitlements to long service leave.

Volunteers have no legal right to superannuation.

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# Club Obligations to volunteers

Even if your organisation is completely volunteer-based, it will be bound by OHS laws if it controls or operates a 'workplace'.

Organisations also have a general duty of care to their volunteers and should adopt effective practices to ensure the safety of volunteers while working for the organisation.

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# Club Obligations to volunteers

Unlike the requirement to take out workers compensation for employees, there is no legal requirement to take out insurance to cover injuries to your volunteers.

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# Club Obligations to volunteers

However, it is a good idea for your organisation to take out personal accident insurance to cover your volunteers for out of pocket medical expenses if they are injured whilst performing working on behalf of your organisation.

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# Club Obligations to volunteers

You should also ensure that your public liability policy covers your organisation for loss caused by negligent acts or omissions of your volunteers.

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# Club Obligations to volunteers

There is no notice period or other requirements to terminate a volunteer relationship – the voluntary nature of the relationship means that it can be ended by either party at any time.

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# Club Obligations to volunteers

Volunteers cannot make unfair or unlawful dismissal claims.

However, it is worth noting that if a person who your organisation said was a 'volunteer' is able to establish in court that they had the attributes of an employee and the court accepts that they were an employee, then they may be entitled to lodge an action for unfair dismissal.

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# Club Obligations to volunteers

In particular, you should be aware of volunteers with special needs, who may require a higher standard of care and a more intensive level of supervision in their work for the organisation.

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# When does a volunteer become an employee?

A volunteer will only become an employee when there is a legal binding agreement in place to employ the volunteer and pay them wages.

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# Questions

Thank you for your time

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